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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/776,094

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Stephen Ritland

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EXAMINER

PHILOGENE, PEDRO

ART UNIT

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3733

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/776,094	Applicant(s) RITLAND, STEPHEN	
	Examiner Pedro Philogene	Art Unit 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-9 and 16-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-9 and 16-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>4/9/08, 12/21/07</u> . | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3,5-9, 16-45 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Errico et al. (5,735,851) in view of Taylor et al (Taylor et al. (6,267,765)).

With respect to claims 1,8, 16, 22, 32, 41 Errico et al. disclose an attachment device adapted for use with a tension link, the tension link (120) including a tension link head (124) and shaft (122), the device comprising a shank (102) having first and second ends, the first end having a securing mechanism (104), and the second end (106) comprising a wall (110) defining by a hollow core (108b), a first expansion slot (111) disposed on the wall, a central aperture; as best seen in FIG. 4., wherein the wall includes a curved exterior surface (via the cuff 130) wherein the second end is deformable to accommodate the insertion of the tension link head (124) through the central aperture and into the hollow core; as set forth in column 6, lines 1-5, and wherein the tension link head (a24) is retained within the hollow core after insertion therein as set forth in column 6, lines 14-23. The attachment device receivingly accepts a connector (160) , the connector comprising a head receptable (150) that at least partially surrounds the second end and limits deformation of the second end upon

securing the connector to the attachment device, a link nut (170); as set forth in column 7, lines 10-67, column 8, lines 1-24; and as best seen in FIGs.1-10.

With respect to claims 1-2, 4-7, 17,18,20,21,23,24,26-28, Errico et al disclose all the limitations, as set forth in column 6, lines 1-5, lines 14-23, as set forth in column 7, lines 10-67, column 8, lines 1-24; and as best seen in FIGs.1-10.

It is noted that Errico et al did not teach of a second end devoid of threads, as claimed by applicant. However, in similar art, Taylor et al provide the evidence of the use of an implant (4) having a securing mechanism and a second end devoid of threads and at least a wall defined by a hollow core wherein the wall includes a curved exterior surface to immobilize the connecting element while at the same time maintain the orientation of the bone-anchoring element.

Therefore, given the teaching of Taylor et al. it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Errico et al, as taught by Taylor et al. immobilize the connecting element while at the same time maintain the orientation of the bone-anchoring element.

Taylor et al disclose a slit (28) which forms the gap as claimed by applicant.

With respect to claims 8, 9, the methods steps, as set forth, would have been obviously carried out in the operation of the device, as set forth above.; and, as set forth in column 7, lines 10-65, wherein Taylor et al disclose that locking nut (170) compresses element (160) which compresses element (150) which compresses element (130) which compresses element (124) which compresses element (110).

It is noted that Errico et al did not teach of at least two expansion slots that are diametrically opposite; as claimed by applicant. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to duplicate the slot of Errico et al and make them diametrically opposite, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Response to Amendment

Applicant's arguments filed 2/12/08 have been fully considered but they are not persuasive. Applicant's arguments with respect to claims 16, 32 are not found to be persuasive. Applicant stated that "In sharp contrast to the claimed invention, the stem 120 is retained within the second end of the attachment device through a separate securing means, namely the cuff 132 a, b. The examiner begs to differ, it is true that the cuff a, b is a separate means, however, in column 7, lines 55-65, Errico et al provide the evidence of the use of a locking nut (170) that applies a downward pressure on the spacer (150) and there against the cuff. Therefore, Errico discloses a single securing attachment device that operates both to secure a tension link head and to secure a connector to an attachment device. Furthermore, to applicant's argument that Errico et al teach of significant number of discrete components; it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the parts separable, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179. Or, it would have been obvious to one having ordinary skill in the art at the

time the invention was made to make the components integral, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 US 164 (1893). As to the gap recited in claim 31, Taylor et al disclose a Gap (28) in the shackle.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Pedro Philogene/
Primary Examiner, Art Unit 3733
April 21, 2008